

## REMARKS

The pending Office Action addresses and rejects claims 1 and 3-29. Reconsideration is respectfully requested in view of the following remarks.

### ***Rejections Pursuant to 35 U.S.C. §103***

#### Claims 1, 3-8, 10-15, and 17-29

The Examiner rejects claims 1, 3-8, 10-15, and 17-29 pursuant to 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 6,494,209 of Kulick in view of U.S. Patent No. 7,021,312 of Cannon. In particular, the Examiner argues that Kulick discloses the claimed invention except for a nasal mask adapted to deliver gases through a patient's nasal passageway. The Examiner thus relies on Cannon to teach such a nasal mask, arguing that it "would have been obvious to modify the invention of Kulick to incorporate a nasal mask for the delivery of gases through the patient's nasal passageway as such is well known in the art as taught by Cannon." Applicant disagrees.

Independent claims 1 and 10 are directed to a system for maintaining an open airway that includes a mouthpiece that is adapted to substantially seal an oral cavity within a patient's mouth. The mouthpiece is further adapted to be coupled to a negative pressure generator that is effective to create a negative pressure within the oral cavity to prevent the soft tissues of the upper airway from collapsing. Independent claim 17 recites a method for maintaining an open airway by forming a substantially sealed oral cavity within a patient's mouth and creating a negative pressure therein to prevent the soft tissues of the upper airway from collapsing. Kulick does not teach or even suggest such a system or method, and Cannon does not remedy the deficiencies of Kulick.

Kulick discloses an oral device having a tongue-shaped cavity for receiving the tongue. While the device is effective to prevent the tongue from collapsing, the device is not effective to seal an oral cavity within a patient's mouth and to allow a negative pressure to be created within the oral cavity. To the contrary, Kulick specifically discloses an oral device that allows a patient to breath. As set forth at Col. 3, lines 50-53, Kulick states that "[b]reathing channels 4 extend through flange 3 and body portion 5 on opposite sides of cavity 19 to permit oral breathing at any time when the device is in use." The breathing channels will thus prevent the device from sealing the patient's oral

cavity, and as a result the Kulick device cannot be used to create a negative pressure within the oral cavity. The Examiner argues that element 8 of Kulick is a negative pressure generator. Element 8 merely allows suction to be applied to the tongue to hold the tongue within the cavity in the mouthpiece. It does not form a negative pressure within a sealed oral cavity, as the oral cavity cannot be sealed using the Kulick device.

Cannon does not remedy the deficiencies of Kulick as Cannon likewise fails to teach a device that is adapted to seal an oral cavity and to allow a negative pressure to be generated within the oral cavity. As shown in Figure 1 of Cannon, the disclosed breathing device merely includes an upper mouthpiece (12) that receives at least some of the user's upper teeth. The mouthpiece does not have a shape that will seal the oral cavity, much less that will allow a negative pressure to be generated in the oral cavity.

Accordingly, independent claims 1, 10, and 17, as well as claims 3-8, 12-15, and 18-29 which depend therefrom, therefore distinguish over Kulick and Cannon and represent allowable subject matter.

#### Claims 9 and 16

The Examiner rejects dependent claims 9 and 16 pursuant to 35 U.S.C. §103(a) as being obvious over Kulick and Cannon and further in view of U.S. Publication No. 2005/0103347 of Curti. As discussed above, Kulick and Cannon do not teach or even suggest a system or method that creates a negative pressure in a substantially sealed oral cavity. Curti does not remedy the deficiencies of Kulick and Cannon because Curti likewise fails to teach such a method of device. Curti is merely directed to a nasal cannula. Accordingly, claims 9 and 16 distinguish over Kulick and Cannon in view of Curti and represent allowable subject matter.

#### *Conclusion*

Applicant submits that all pending claims are now in condition for allowance, and allowance thereof is respectfully requested.

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The Examiner is encouraged to telephone the undersigned attorney for Applicant is such communication is deemed to expedite the prosecution of this application.

Respectfully submitted,

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